

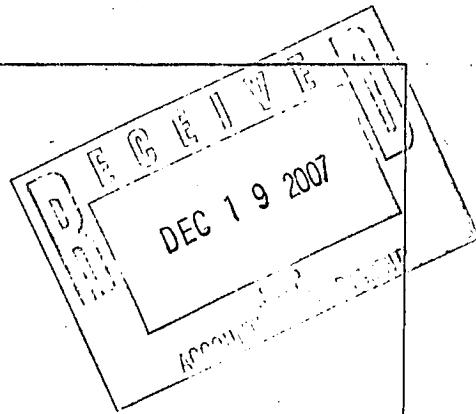
SEMANU MILO  
 PLAINTIFF/PETITIONER/MOVANT'S NAME  
P-78 110  
 PRISON NUMBER  
SALINAS VALLEY STATE PRISON  
 PLACE OF CONFINEMENT  
BOX 1050, SOLEDAD CA 93960  
 ADDRESS

FILED

2007 DEC 26 PM 4:17

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA*Rm*

DEPUTY



United States District Court  
 Southern District Of California

MILO SEMANU,  
 Plaintiff/Petitioner/Movant  
 v.  
KEVIN FULLNER, et al.,  
 Defendant/Respondent

Civil No. 07-2255 JM (PCL)

(TO BE FILLED IN BY U.S. DISTRICT COURT CLERK)

MOTION AND DECLARATION UNDER  
 PENALTY OF PERJURY IN SUPPORT  
 OF MOTION TO PROCEED IN FORMA  
PAUPERIS

I, MILO SEMANU,

declare that I am the Plaintiff/Petitioner/Movant in this case. In support of my request to proceed without prepayment of fees or security under 28 U.S.C. § 1915, I further declare I am unable to pay the fees of this proceeding or give security because of my poverty, and that I believe I am entitled to redress.

In further support of this application, I answer the following question under penalty of perjury:

1. Are you currently incarcerated?  Yes  No (If "No" go to question 2)

If "Yes," state the place of your incarceration SALINAS VALLEY STATE PRISON

Are you employed at the institution?  Yes  No

Do you receive any payment from the institution?  Yes  No

[Have the institution fill out the Certificate portion of this affidavit and attach a certified copy of the trust account statement from the institution of your incarceration showing at least the last six months transactions.]

2. Are you currently employed?  Yes  No

a. If the answer is "Yes," state the amount of your take-home salary or wages and pay period and give the name and address of your employer.

*[Redacted]*

*DEC 19 2007*

*ACCO*

b. If the answer is "No" state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer.

*[Redacted]*

3. In the past twelve months have you received any money from any of the following sources?

- a. Business, profession or other self-employment  Yes  No
- b. Rent payments, royalties interest or dividends  Yes  No
- c. Pensions, annuities or life insurance  Yes  No
- d. Disability or workers compensation  Yes  No
- e. Social Security, disability or other welfare  Yes  No
- f. Gifts or inheritances  Yes  No
- g. Spousal or child support  Yes  No
- g. Any other sources  Yes  No

If the answer to any of the above is "Yes" describe each source and state the amount received and what you expect you will continue to receive each month.

*[Redacted]*

4. Do you have any checking account(s)?  Yes  No

a. Name(s) and address(es) of bank(s):

b. Present balance in account(s):

5. Do you have any savings/IRA/money market/CDS' separate from checking accounts?  Yes  No

a. Name(s) and address(es) of bank(s):

b. Present balance in account(s):

6. Do you own an automobile or other motor vehicle?  Yes  No

a. Make: \_\_\_\_\_ Year: \_\_\_\_\_ Model: \_\_\_\_\_

b. Is it financed?  Yes  No

c. If so, what is the amount owed?

7. Do you own any real estate, stocks, bonds, securities, other financial instruments, or other valuable property?

Yes  No

If "Yes" describe the property and state its value. \_\_\_\_\_

8. List the persons who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support. \_\_\_\_\_

9. List any other debts (current obligations, indicating amounts owed and to whom they are payable): \_\_\_\_\_

10. List any other assets or items of value (specify real estate, gifts, trusts inheritances, government bonds, stocks, savings certificates, notes, jewelry, artwork, or any other assets [include any items of value held in someone else's name]): \_\_\_\_\_

12. If you answered all of the items in #3 "No," and have not indicated any other assets or sources of income anywhere on this form, you must explain the sources of funds for your day-to-day expenses. \_\_\_\_\_

I declare under penalty of perjury that the above information is true and correct and understand that a false statement herein may result in the dismissal of my claims.

12/18/07

DATE



SIGNATURE OF APPLICANT

If you are a prisoner you must have an officer from your institution provide this official certificate as to the amount of money in your prison account. There are no exceptions to this requirement.

**PRISON CERTIFICATE**  
**(Incarcerated applicants only)**  
 (To be completed by the institution of incarceration)

I certify that the applicant SE MANU MILO (P-78110),  
 (NAME OF INMATE)

P78110

(INMATE'S CDC NUMBER)

has the sum of \$ \_\_\_\_\_ on account to his/her credit at \_\_\_\_\_

SALINAS VALLEY STATE PRISON, SOLEDAD, CA 93960  
 (NAME OF INSTITUTION)

I further certify that the applicant has the following securities NONE

to his/her credit according to the records of the aforementioned institution. I further certify that during  
 the past six months the applicant's *average monthly balance* was \$ 1.27

and the *average monthly deposits* to the applicant's account was \$ 1.92

**ALL PRISONERS MUST ATTACH A CERTIFIED COPY OF THEIR TRUST ACCOUNT STATEMENT SHOWING TRANSACTIONS FOR THE SIX-MONTH PERIOD IMMEDIATELY PRECEDING THE FILING OF THE COMPLAINT PER 28 U.S.C. § 1915(a)(2).**

12/20/07

DATE

SIGNATURE OF AUTHORIZED OFFICER OF INSTITUTION

D. BEZA

OFFICER'S FULL NAME (PRINTED)

ACCOUNTING OFFICER, SUPV

OFFICER'S TITLE/RANK

**TRUST ACCOUNT WITHDRAWAL AUTHORIZATION**  
**(Incarcerated applicants only)**

(This form **MUST** be completed by the prisoner requesting to proceed in forma pauperis. An incomplete "Trust Account Withdrawal Authorization Form," or "Prison Certificate" will result in automatic denial of the prisoner's request to proceed in forma pauperis.)

I, SEMANU MILO (P78110), request and authorize the agency holding me in custody to prepare for the Clerk of the United States District Court for the Southern District of California, a certified copy of the statement for the past six months of my trust fund account (or institutional equivalent) activity at the institution where I am incarcerated.

I further request and authorize the agency holding me in custody to calculate and disburse funds from my trust fund account (or institutional equivalent) pursuant to any future orders issued by the Court relating to this civil action pursuant to the Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, Title VIII, §§ 801-10, 110 Stat. 1321 (1996).

This authorization is furnished in connection with a civil action filed in the Southern District of California, and I understand that, pursuant to 28 U.S.C. §§ 1914 and 1915(b)(1), the total amount of filing fees for which I am obligated is either  \$150 (civil complaint) or  \$5 (habeas corpus petition) (check one). I also understand that this fee will be debited from my account regardless of the outcome of this action. This authorization shall apply to any other agency into whose custody I may be transferred.

12/18/07

DATE

SIGNATURE OF PRISONER



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2 Case Number: \_\_\_\_\_  
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CERTIFICATE OF FUNDS

IN

PRISONER'S ACCOUNT

I certify that attached hereto is a true and correct copy of the prisoner's trust account statement showing transactions of SEMANU MNU for the last six months at

SALINAS VALLEY STATE PRISION  
ACCOUNTING DEPARTMENT  
P.O. BOX 1020  
SOLEDAD, CA 93960-1020

[prisoner name]

where (s)he is confined.

[name of institution]

I further certify that the average deposits each month to this prisoner's account for the most recent 6-month period were \$ 1.92 and the average balance in the prisoner's account each month for the most recent 6-month period was \$ 1.27.

Dated:

12/20/07

M. Bago  
[Authorized officer of the institution]

REPORT ID: TS3030 .701

REPORT DATE: 12/20/07  
PAGE NO: 2SALINAS VALLEY STATE PRISON  
INMATE TRUST ACCOUNT STATEMENT

FOR THE PERIOD: JUN. 01, 2007 THRU DEC. 20, 2007

ACCT: P78110

ACCT NAME: MILO, SEMANU

ACCT TYPE: I

## \* RESTITUTION ACCOUNT ACTIVITY

DATE SENTENCED: 04/24/00  
COUNTY CODE: \*SACCASE NUMBER: \*99F02202  
FINE AMOUNT: \$ 72,420.00

DATE	TRANS.	DESCRIPTION	TRANS. AMT.	BALANCE
06/01/2007		BEGINNING BALANCE		72,410.24
07/06/07	VR54	RESTITUTION DEDUCTION-SUPPORT	2.50-	72,407.74
08/06/07	VR54	RESTITUTION DEDUCTION-SUPPORT	3.82-	72,403.92
09/07/07	VR54	RESTITUTION DEDUCTION-SUPPORT	0.88-	72,403.04
10/04/07	VR54	RESTITUTION DEDUCTION-SUPPORT	5.57-	72,397.47
12/06/07	VR54	RESTITUTION DEDUCTION-SUPPORT	4.55-	72,392.92
12/06/07	VR54	RESTITUTION DEDUCTION-SUPPORT	4.92-	72,388.00

\* THIS STATEMENT DOES NOT REFLECT THE ADMINISTRATIVE FEE CHARGE THAT \*  
 \* IS EQUAL TO TEN PERCENT OF THE RESTITUTION AMOUNT COLLECTED. \*

## TRUST ACCOUNT SUMMARY

BEGINNING BALANCE	TOTAL DEPOSITS	TOTAL WITHDRAWALS	CURRENT BALANCE	HOLDS BALANCE	TRANSACTIONS TO BE POSTED
0.18	20.06	20.24	0.00	38.75	0.00



THE WITHIN INSTRUMENT IS A CORRECT  
COPY OF THE TRUST ACCOUNT MAINTAINED  
BY THIS OFFICE.  
ATTEST:

CALIFORNIA DEPARTMENT OF CORRECTIONS  
CY *[Signature]*  
TRUST OFFICE

CURRENT  
AVAILABLE  
BALANCE  
38.75-

REPORT ID: TS3030 .701

REPORT DATE: 12/20/07  
PAGE NO: 1

CALIFORNIA DEPARTMENT OF CORRECTIONS  
SALINAS VALLEY STATE PRISON  
INMATE TRUST ACCOUNTING SYSTEM  
INMATE TRUST ACCOUNT STATEMENT

FOR THE PERIOD: JUN. 01, 2007 THRU DEC. 20, 2007

ACCOUNT NUMBER : P78110  
ACCOUNT NAME : MILO, SEMANU  
PRIVILEGE GROUP: A

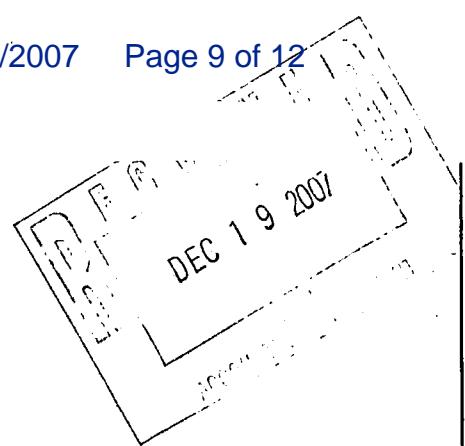
BED/CELL NUMBER: FAB3T1000000124U  
ACCOUNT TYPE: I

## TRUST ACCOUNT ACTIVITY

TRAN	DATE	CODE	DESCRIPTION	COMMENT	CHECK NUM	DEPOSITS	WITHDRAWALS	BALANCE
	06/01/2007		BEGINNING BALANCE					0.18
	07/06*VD54	INMATE PAYROL	0070 P6/07		2.25			2.43
	07/06 W213	FEDERAL FILIN	0083 STH			0.45		1.98
	07/10 W512	LEGAL POSTAGE	0109 LPOST			0.46		1.52
	07/11 W516	LEGAL COPY CH	0130 LCOPY			1.12		0.40
	07/12 W515	COPY CHARGE	0149 /COPY			0.40		0.00
	08/06*VD54	INMATE PAYROL	0414 P7/07		3.44			3.44
	08/06 W213	FEDERAL FILIN	0423 STH			0.69		2.75
	08/28 W536	COPAY CHARGE	0640 COPAY			2.75		0.00
	09/07*VD54	INMATE PAYROL	0706 P8/07		0.80			0.80
	09/07 W213	FEDERAL FILIN	0720 STH			0.16		0.64
	09/17 W512	LEGAL POSTAGE	0827 LCOPY			0.64		0.00
	10/04*VD54	INMATE PAYROL	0980 P9/07		5.03			5.03
	10/04 W213	FEDERAL FILIN	0990 STH			1.01		4.02
	10/15 W512	LEGAL POSTAGE	1072 ENVEL			0.90		3.12
	10/16 W516	LEGAL COPY CH	1085 LCOPY			0.90		2.22
	10/25 W516	LEGAL COPY CH	1186 LCOPY			0.57		1.65
	10/29 W512	LEGAL POSTAGE	1201 LPOST			1.65		0.00
	12/06*VD54	INMATE PAYROL	1490P11/07		4.10			4.10
	12/06*VD54	INMATE PAYROL	1494P10/07		4.44			8.54
	12/06 W213	FEDERAL FILIN	1501 STH			1.71		6.83
	12/10 W516	LEGAL COPY CH	1531 LCOPY			6.83		0.00

**CURRENT HOLDS IN EFFECT**

DATE PLACED	HOLD CODE	DESCRIPTION	COMMENT	HOLD AMOUNT
12/03/2007	H118	LEGAL COPIES HOLD	1465 LCOPY	12.30
12/03/2007	H118	LEGAL COPIES HOLD	1465 LCOPY	4.80
12/03/2007	H118	LEGAL COPIES HOLD	1465 LCOPY	18.60
12/03/2007	H109	LEGAL POSTAGE HOLD	1466 ENVEL	1.10
12/03/2007	H109	LEGAL POSTAGE HOLD	1467 ENVEL	1.35
12/12/2007	H110	COPIES HOLD	1566 COPY	0.60



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

SEMANU MILO,  
CDCR #P-78110,

Plaintiff,

vs.

KEVIN FULLNER, et al.,

Defendants.

Civil No. 07-2255 JM (PCL)

**ORDER DENYING MOTION TO  
PROCEED IN FORMA PAUPERIS  
AND DISMISSING CASE  
WITHOUT PREJUDICE  
PURSUANT TO  
28 U.S.C. § 1915(a)**

[Doc. No. 2]

Semanu Milo ("Plaintiff"), a state prisoner currently incarcerated at Salinas Valley State Prison located in Soledad, California, and proceeding pro se, has submitted a civil rights Complaint pursuant to 28 U.S.C. § 1983.

Plaintiff has not prepaid the \$350 filing fee mandated by 28 U.S.C. § 1914(a); instead, he has filed a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a) [Doc. No. 2].

**I. MOTION TO PROCEED IFP**

Effective April 9, 2006, all parties instituting any civil action, suit or proceeding in a district court of the United States, except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a). An action may proceed despite a party's failure to pay only if the party is granted leave to proceed in forma pauperis ("IFP") pursuant to 28 U.S.C.

1 § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047, 1051 (9th Cir. 2007); *Rodriguez v. Cook*,  
 2 169 F.3d 1176, 1177 (9th Cir. 1999). Prisoners granted leave to proceed IFP however, remain  
 3 obligated to pay the entire fee in installments, regardless of whether the action is ultimately  
 4 dismissed for any reason. *See* 28 U.S.C. § 1915(b)(1) & (2).

5 Prisoners seeking leave to proceed IFP must also submit a “certified copy of the trust fund  
 6 account statement (or institutional equivalent) for the prisoner for the 6-month period  
 7 immediately preceding the filing of the complaint....” 28 U.S.C. § 1915(a)(2). From the  
 8 certified trust account statement, the Court must assess an initial payment of 20% of (a) the  
 9 average monthly deposits in the account for the past six months, or (b) the average monthly  
 10 balance in the account for the past six months, whichever is greater, unless the prisoner has no  
 11 assets. *See* 28 U.S.C. § 1915(b)(1), (4); *see also Taylor v. Delatoore*, 281 F.3d 844, 850 (9th  
 12 Cir. 2002). Thereafter, the institution having custody of the prisoner must collect subsequent  
 13 payments, assessed at 20% of the preceding month’s income, in any month in which the  
 14 prisoner’s account exceeds \$10, and forward those payments to the Court until the entire filing  
 15 fee is paid. *See* 28 U.S.C. § 1915(b)(2).

16 While Plaintiff has filed a Motion to Proceed IFP in this matter pursuant to 28 U.S.C.  
 17 § 1915(a), he has not attached a certified copy of his prison trust account statement for the 6-  
 18 month period immediately preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2);  
 19 S.D. CAL. CivLR 3.2. Section 1915(a)(2) clearly mandates that prisoners “seeking to bring a  
 20 civil action ...without prepayment of fees ... *shall* submit a certified copy of the trust fund  
 21 account statement (or institutional equivalent) ... for the 6-month period immediately preceding  
 22 the filing of the complaint.” 28 U.S.C. § 1915(a)(2) (emphasis added).

23 Without Plaintiff’s trust account statement, the Court is simply unable to assess the  
 24 appropriate amount of the filing fee required to initiate this action. *See* 28 U.S.C. § 1915(b)(1).  
 25 Therefore, Plaintiff’s Motion to Proceed IFP must be DENIED.

26 **II. CONCLUSION AND ORDER**

27 For the reasons set forth above, **IT IS ORDERED** that:

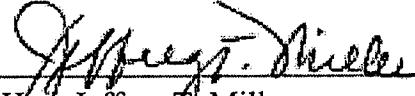
28 (1) Plaintiff’s Motion to Proceed IFP [Doc. No. 2] is **DENIED**.

1                   (2) This action is **DISMISSED** without prejudice for failure to prepay the \$350 filing  
 2 fee mandated by 28 U.S.C. § 1914(a), and for failure to successfully move to proceed IFP  
 3 pursuant to 28 U.S.C. § 1915(a).

4                   (3) Plaintiff is GRANTED forty five (45) days from the date this Order is Filed to  
 5 either (1) pay the entire \$350 filing fee, or (2) file a new Motion to Proceed IFP, which  
 6 includes a certified copy of his trust account statement for the 6-month period preceding the  
 7 filing of his Complaint pursuant to 28 U.S.C. § 1915(a)(2) and S.D. CAL. CIVLR 3.2(b). /

8                   **IT IS FURTHER ORDERED** that the Clerk of the Court shall provide Plaintiff with a  
 9 Court-approved form "Motion and Declaration in Support of Motion to Proceed IFP" in this  
 10 matter. If Plaintiff neither pays the \$350 filing fee in full nor sufficiently completes and files the  
 11 attached Motion to Proceed IFP, together with a certified copy of his prison trust account  
 12 statement within 45 days, this action shall remain closed without further Order of the Court.

13 DATED: November 30, 2007

  
 14 Hon. Jeffrey T. Miller  
 15 United States District Judge

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CIVIL NO 07-2255 JM (PCL)

STATE OF CALIFORNIA

COUNTY OF MONTEREY

(C.C.P. SEC. 466 &amp; 2015.5; 28 U.S.C. SEC 1746)

I, SEMANU MILD (P-78110) declare under penalty of perjury that: I am the PLAINTIFF in the above entitled action; I have read the foregoing documents and know the contents thereof and the same is true of my own knowledge, except as to matters stated therein upon information, and belief, and as to those matters, I believe they are true.

Executed this 18 day of DECEMBER, 2007, at Salinas Valley State Prison, Soledad, CA 93960-1050.

(Signature)

  
DECLARANT/PRISONER
**PROOF OF SERVICE BY MAIL**

(C.C.P. SEC 1013(a) &amp; 2015.5; 28 U.S.C. SEC. 1746)

I, SEMANU MILD, am a resident of California State Prison, in the County of Monterey, State of California; I am over the age of eighteen (18) years and am ~~not~~ a party of the above entitled action. My state prison address is: P.O. Box 1050, Soledad, CA 93960-1050.

On DECEMBER 18, 2007, I served the foregoing: APPLICATION TO PROCEED IN FORMA PAUPERIS PURSUANT TO 28 USC § 1915

(Set forth exact title of document(s) served)

On the party(s) herein by placing a true copy(s) thereof, enclosed in sealed envelope(s), with postage thereof fully paid, ~~in the United States Mail~~, in a deposit box so provided at Salinas Valley State Prison, Soledad, CA 93960-1050. VIA INSTITUTIONAL MAIL

TRUST OFFICE SUPERVISORSALINAS VALLEY STATE PRISONP.O. BOX 1020SOLEDAD, CA 93960

(List parties served)

There is delivery service by United States Mail at the place so addressed, and/or there is regular communication by mail between the place of mailing and the place so addressed.

I declare under penalty of perjury that the foregoing is true and correct.

DATED: 12/18/07, 2007
  
DECLARANT/PRISONER